

JOSEPH P. RUSSONIELLO (CSBN 44332)
United States Attorney

BRIAN J. STRETCH (CSBN 163973)
Chief, Criminal Division

PATRICIA J. KENNEY (CSBN 130238)
Assistant United States Attorney
450 Golden Gate Avenue
San Francisco, CA 94102
Telephone: 415.436.6857
Facsimile: 415.436.6748
Email: patricia.kenney@usdoj.gov

Attorneys for the United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CATERPILLAR FINANCIAL SERVICES
CORPORATION, A DELAWARE
CORPORATION),

Plaintiff,

v.

UNITED STATES DEPARTMENT OF JUSTICE
DRUG ENFORCEMENT ADMINISTRATION,
A FEDERAL AGENCY,

Defendant.

No. 09-CV-2867 EMC

STIPULATION AND ORDER
(1) JOINING ISSUE; (2) SETTling
THIS CASE ON THE MERITS; AND
(3) DISMISSING IT

The parties, through their undersigned counsel, stipulate and agree as follows:

1. The plaintiff is Caterpillar Financial Services Corporation, a Delaware Corporation ("Caterpillar Finance"), and the defendant is United States Department of Justice Drug Enforcement Administration ("DEA"). Plaintiff Caterpillar Finance and defendant DEA are referred to as the "Parties" in this document which is hereinafter referred to as the "Settlement Agreement."
2. For purposes of this Settlement Agreement only, defendant DEA agrees to accept service of process and the Parties agree to join issue on the basis that plaintiff Caterpillar Financial had a lien on one Caterpillar Model 420E Backhoe Loader, Serial Number HLS02110

1 ("Caterpillar Backhoe") at the time when defendant DEA seized and administratively forfeited
2 the Caterpillar Backhoe.

3 3. After full and open discussion, the Parties agree to resolve any and all claims
4 against defendant DEA, including but not limited to any claims arising out of Caterpillar
5 Finance's request to grant administrative remission and DEA's response to that claim, as well as
6 any claims against any and all past and present officials, employees and agents of the DEA,
7 arising out of the facts alleged the Complaint filed by plaintiff Caterpillar Finance on or about
8 June 25, 2009 or out of facts which could have been alleged pertaining to the seizure and
9 administrative forfeiture of the Caterpillar Backhoe.

10 4. The Parties agree that the resolution of the lawsuit is based solely on the terms
11 stated in this Settlement Agreement. It is expressly understood that this Settlement Agreement
12 has been freely and voluntarily entered into by the Parties. The Parties further agree that there
13 are no express or implied terms or conditions of settlement, whether oral or written, other than
14 those set forth in this Settlement Agreement. This Settlement Agreement shall not be modified
15 or supplemented except in writing signed by the Parties. The Parties have entered into this
16 Settlement Agreement in lieu of continued protracted litigation and district court adjudication.

17 5. The Parties further agree that this Settlement Agreement does not constitute
18 precedent on any legal issue for any purpose whatsoever, including all administrative
19 proceedings and any lawsuits.

20 6. The Parties agree that plaintiff Caterpillar Finance releases and discharges the
21 United States, as well as any past and present officials, employees, agents, attorneys, their
22 successors and assigns, as well as any state and local law enforcement officers, from any and all
23 obligations, damages, liabilities and demands of any kind and nature whatsoever, whether
24 suspected or unsuspected, at law or in equity, known or unknown, arising out of the allegations
25 set forth in plaintiff Caterpillar Finance's Complaint, the seizure, the administrative forfeiture of
26 the Caterpillar Backhoe, Caterpillar Finance's request to grant administrative remission and
27 DEA's response to that claim.

1 7. In order to resolve this case without the expense of protracted litigation, the
2 Parties agree that defendant DEA will pay plaintiff Caterpillar Finance the net proceeds of the
3 sale of the Caterpillar Backhoe which it administratively forfeited less the costs of that sale
4 which amounts to \$44,934.34. The Caterpillar Backhoe was sold for \$50,000 and the costs
5 deducted totaled \$5,065.66 which included \$149.16 for advertising; \$213.00 for towing, \$753.50
6 for storage and the cost of the sale to the United States Marshals Service was \$3,950. The Parties
7 agree that the check for \$44,934.34 shall be made payable to both plaintiff Caterpillar Finance
8 and plaintiff's counsel, Mark D. Poniatowaski, Law Offices of Mark D. Poniatowski,
9 Professional Corporation, 2811 Castro Valley Boulevard, Suite 208, Castro Valley, California
10 94546. Such payment shall be in full settlement and satisfaction of any and all claims that
11 plaintiff Caterpillar Finance, its representatives and assignees, asserted or could have asserted
12 against defendant DEA, including but not limited to any claims arising out of Caterpillar
13 Finance's request to grant administrative remission and DEA's response to that claim. The check
14 shall be ready for pickup within 14 days of the date that the Court enters this stipulation as an
15 order.

16 8. Plaintiff Caterpillar Finance and defendant DEA agree that each party shall pay its
17 own attorneys' fees and costs.

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28 Stipulated Settlement
Agreement & Dismissal
No. 09-CV-2867 EMC

9. Based on the foregoing Settlement Agreement between the Parties, the Parties agree that, subject to the Court's approval, this action be and hereby is DISMISSED.

IT IS SO STIPULATED:

Dated: 9/17, 2009

JOSEPH P. RUSSONIELLO
United States Attorney

PATRICIA J. KENNEY
Assistant United States Attorney
Attorneys for the United States

LAW OFFICES OF MARK D. PONIATOWSKI
PROFESSIONAL CORPORATION

Dated: 9/17, 2009

MARK D. PONIATOWSKI
Attorney for Caterpillar Financial Services Corporation

SHARLENE PIERCE
SPECIAL ACCOUNTS REPRESENTATIVE
CATERPILLAR FINANCIAL SERVICES CORP.
Telephone: 615.341.1225

I, Sharlene Pierce, Special Accounts Representative, Caterpillar Financial Services Corporation, 2120 West End Avenue, Nashville, Tennessee 37203, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I am authorized by plaintiff Caterpillar Financial Services Corporation to enter in to this Settlement Agreement on behalf of plaintiff. Executed in Nashville, Tennessee, on this ____ day of September, 2009.

SHARLENE PIERCE

PURSUANT TO THE FOREGOING SETTLEMENT AGREEMENT, IT IS SO ORDERED ON THIS ____ OF ____, 2009, AND IT IS FURTHER ORDERED THAT THE INSTANT CASE BE, AND HEREBY IS, DISMISSED.

HONORABLE EDWARD M. CHEN
United States Magistrate Judge

1 9. Based on the foregoing Settlement Agreement between the Parties, the Parties
2 agree that, subject to the Court's approval, this action be and hereby is DISMISSED.

3 IT IS SO STIPULATED:

JOSEPH P. RUSSONIELLO
United States Attorney


4 Dated: _____, 2009

PATRICIA J. KENNEY
Assistant United States Attorney
Attorneys for the United States

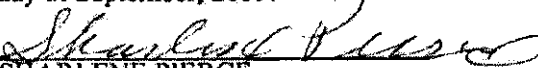
LAW OFFICES OF MARK D. PONIATOWSKI
PROFESSIONAL CORPORATION

8 Dated: _____, 2009


9 MARK D. PONIATOWSKI
Attorney for Caterpillar Financial Services Corporation

10 
11 SHARLENE PIERCE
12 SPECIAL ACCOUNTS REPRESENTATIVE
13 CATERPILLAR FINANCIAL SERVICES CORP.
Telephone: 615.341.1225

14 I, Sharlene Pierce, Special Accounts Representative, Caterpillar Financial Services
15 Corporation, 2120 West End Avenue, Nashville, Tennessee 37203, declare under penalty of
16 perjury pursuant to 28 U.S.C. § 1746 that I am authorized by plaintiff Caterpillar Financial
17 Services Corporation to enter in to this Settlement Agreement on behalf of plaintiff. Executed in
18 Nashville, Tennessee, on this 17 day of September, 2009.

19 
20 SHARLENE PIERCE

21
22 PURSUANT TO THE FOREGOING SETTLEMENT AGREEMENT, IT IS SO
23 ORDERED ON THIS 28th OF September, 2009, AND IT IS FURTHER ORDERED
24 THAT THE INSTANT CASE BE, AND HEREBY IS, DISMISSED.

25 
26 HONORABLE EDWARD M. CHEN
27 United States Magistrate Judge

28 Stipulated Settlement
Agreement & Dismissal
No. 09-CV-2867 EMC